

2006 No.

SOCIAL SECURITY

TERMS AND CONDITIONS OF EMPLOYMENT

**The Social Security (Contributions) (Amendment No.)
Regulations 2006**

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - ***

The Commissioners for Her Majesty’s Revenue and Customs, in exercise of the powers conferred by section 175(4) of, and paragraph 3B(11) of Schedule 1 to, the Social Security Contributions and Benefits Act 1992(a), and by section 171(4) of, and paragraph 3B(11) of Schedule 1 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b), and in each case now exercisable by them(c), make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Contributions) (Amendment No.) Regulations 2006 and shall come into force on April 2006.

In these Regulations “the principal Regulations” means the Social Security (Contributions) Regulations 2001(d)

Amendment of the principal Regulations

2.—(1) The principal Regulations shall be amended as follows.

(2) In paragraph 1(1) of Schedule 5 (elections about securities options, restricted securities and convertible securities) after paragraph (d) insert—

(dd) a statement that it does not apply in relation to any liability, or any part of any liability, arising as a result of regulations being given retrospective effect by virtue

(a) 1992 c. 4. Section 175(4) was amended by paragraph 29(4) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2). Paragraph 3B was inserted by section 77(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19: “the 2000 Act”) and amended by section 3(3) of the National Insurance Contributions and Statutory Payments Act 2004 (c. 3: “the 2004 Act”) and section 5 of the National Insurance Contributions Act 2006 (c.).

(b) 1992 c. 7. Section 171(4) was extended by virtue of the amendment contained in paragraph 28(3) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671). Paragraph 3B was inserted by section 80(2) of the 2000 Act, and amended by section 4(3) of the 2004 Act and section 6 of the 2006 Act.

(c) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50 of that Act provides that, in so far as it is appropriate in consequence of section 5, a reference, however expressed, to the Commissioners of Inland Revenue is to be read as a reference to the Commissioners for Her Majesty’s Revenue and Customs.

(d) S.I. 2001/1004: the relevant amendments are those made by regulation 8(b) of S.I. 2004/2096.

of section 4B(2) of either the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992;”.

(3) The amendment made by paragraph (2) does not affect the continuing validity of any election made prior to the coming into force of these Regulations, but subject to section 5(4) of the National Insurance Contributions Act 2006.

A. Commissioner

A.N. Other

2006

Two of the Commissioners for Her Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004: “the 2001 Regulations”) in consequence of the enactment of the National Insurance Contributions Act 2006 (c. “the 2006 Act”). That Act provides, for the first time, for the making of regulations with retrospective effect in relation to national insurance contributions.

Schedule 5 to the 2001 Regulations prescribes the form and manner of making an election in relation to national insurance contributions arising on securities options, restricted securities and convertible securities. Sub-paragraph (7B) paragraph 3B of each of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) and Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (inserted by sections 5(3) and 6(3) respectively of the 2006 Act) preclude an election under those paragraphs having effect in relation to contributions, or parts of contributions, liability to which arises as a result of regulations being given retrospective effect by virtue of section 4B(2) of either of the 1992 Acts. Schedule 5 to the 2001 Regulations is amended so that any new elections to transfer liability for secondary Class 1 contributions must contain a statement to that effect.

Regulation 1 provides for citation, commencement and interpretation.

Regulation 2 makes the amendments to Schedule 5 to the 2001 Regulations, and contains a saving for the continuing effect of elections made before the coming into force of the amendments.

These Regulations do not impose new costs on business.

Overview for Regulations required for Clauses 5 and 6 of National Insurance Contributions Bill

Clauses 5 and 6 prevents the application NIC agreements and elections on past earnings brought into a Class 1 NIC liability by backdated regulations that may be made under section 4B(2).

The draft regulations only require minor amendments to be made to the existing Regulations. The NIC regulations which provide the rules on what an NIC Election must contain is in Schedule 5 of the Social Security (Contributions) Regulations 2001.

Agreements

The regulations are silent on the form of the agreement and on the level of recovery, in order to offer employers maximum flexibility as to how agreements are operated. The primary legislation governing agreements ensure that the liability for the secondary NIC stays firmly with the secondary contributor (who is usually the employer

Therefore, no amendments are required to the regulations as a result of Clause 5(2) and 6(2) of the Bill. Everything else remains undisturbed – recording, collection etc.

Joint Elections

A secondary contributor who wishes to transfer secondary NICs liability to its employees by way of an election first needs to obtain approval from HMRC. This approval relates to the form of the election and the arrangements made to ensure that the employee meets the transferred liability. The election contains a number of statements that bind the employee and employer to the election and these regulations require a further statement to be included.

Some minor changes to Schedule 5 of the Social Security Contributions Regulations 2001 will be needed to reflect the change being introduced by the National Insurance Contributions Bill:

- A statement to the effect that an election will not apply to payments brought into a Class 1 NICs charge by regulations made under section 4B(2).
- Confirmation that elections approved by HMRC before regulations made under 4B(2) come into force will not need to be re-submitted for further approval.